

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 3:23-cr-00006-MMD-CSD

Plaintiff,

ORDER

v.

COLBY VEGA ALVAREZ-MORA,

Defendant.

12 | I. SUMMARY

13 Defendant Colby Vega Alvarez-Mora has been indicted on one count of being a
14 felon in possession of a firearm under 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Alvarez-
15 Mora filed a motion to dismiss his indictment (“Motion”), contending the underlying statute
16 violates the Second Amendment.¹ (ECF No. 28.) The Court will deny Alvarez-Mora’s
17 Motion because Ninth Circuit precedent deciding this issue has not been abrogated and,
18 alternatively, the history and tradition of this nation’s firearms regulation supports
19 disarming persons convicted of felony offenses.

20 II. BACKGROUND

21 On March 2, 2023, a federal grand jury indicted Alvarez-Mora on one count of
22 possessing a firearm as a prohibited person in violation of 18 U.S.C. § 922(g)(1) and 18
23 U.S.C. § 924(a)(2). (ECF No. 1 (“Indictment”).) The Indictment alleges that Alvarez-Mora
24 knowingly possessed a pistol despite having been convicted of a crime punishable by
25 imprisonment for a term longer than one year. (*Id.*)

26 | //

27 | //

¹The Court has reviewed the parties' response and reply. (ECF Nos. 30, 31.)

1 **III. DISCUSSION**

2 Alvarez-Mora moves to dismiss the charge against him on the grounds that that
 3 18 U.S.C. § 922(g)(1) fails the ‘historical tradition’ test articulated in *New York State Rifle*
 4 & *Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), and thus violates the Second
 5 Amendment. (ECF No. 28.) Under Section 922(g)(1), it is unlawful for “any person . . .
 6 who has been convicted in any court of, a crime punishable by imprisonment for a term
 7 exceeding one year . . . [to] possess in or affecting commerce, any firearm.” 18 U.S.C. §
 8 922(g)(1). Such restrictions on access to firearms must be assessed against the Second
 9 Amendment right to “keep and bear arms.” U.S. CONST. amend II.

10 In the wake of the Supreme Court’s 2008 decision in *District of Columbia v. Heller*,
 11 554 U.S. 570 (2008), circuit courts convened upon a two-step test for determining whether
 12 arms regulations violate the Second Amendment. See, e.g., *United States v. Chovan*,
 13 735 F.3d 1127, 1136-37 (9th Cir. 2013). The Supreme Court in *Bruen* recently shortened
 14 and clarified that test, in large part by discarding its second step. See 597 U.S. at 17-19.
 15 Now, courts must first determine the threshold matter of whether “the Second
 16 Amendment’s plain text covers an individual’s conduct”; if so, “the Constitution
 17 presumptively protects that conduct.” *Id.* at 17. A regulation of protected conduct may still
 18 be upheld if the government can demonstrate that it is “consistent with this Nation’s
 19 historical tradition of firearm regulation.” *Id.* Even under this revised framework, Section
 20 922(g)(1) passes constitutional muster.

21 **A. Abrogation of Ninth Circuit Caselaw**

22 The Ninth Circuit has repeatedly upheld Section 922(g)(1) against Second
 23 Amendment challenges. See, e.g., *United States v. Phillips*, 827 F.3d 1171, 1174 (9th
 24 Cir. 2016); *United States v. Vongxay*, 594 F.3d 1111, 1118 (9th Cir. 2010). However,
 25 since those opinions were published, the Supreme Court invalidated part of the circuit
 26 court’s prior test for assessing constitutionality under the Second Amendment. See
 27 *Bruen*, 597 U.S. at 18-19. Alvarez-Mora now contends that the new *Bruen* test is so
 28 fundamentally different from the Ninth Circuit’s previous approach that those prior rulings

1 on Section 922(g)(1) have been abrogated. (ECF No. 28 at 2-4.)

2 Where the reasoning or theory of prior Ninth Circuit authority is “clearly
 3 irreconcilable with the reasoning or theory of intervening higher authority,” district courts
 4 must consider themselves bound by the intervening authority and reject the prior Ninth
 5 Circuit opinions as “effectively overruled.” *Miller v. Gammie*, 335 F.3d 889, 893, 900 (9th
 6 Cir. 2003) (en banc), *overruled on different grounds as recognized in Hernandez v.*
 7 *Garland*, 47 F. 4th 908, 910 (9th Cir. 2022). The ‘clearly irreconcilable’ requirement is a
 8 high bar. See *Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012); *Close v. Sotheby’s,*
 9 *Inc.*, 894 F.3d 1061,1073 (9th Cir. 2018). It is not enough for the intervening authority to
 10 have some tension with or to cast doubt on the prior circuit precedent; rather, prior circuit
 11 opinions remain in effect if they can apply without “running afoul of the intervening
 12 authority.” *Lair*, 697 F.3d at 1207 (quotation marks omitted); *see also Rodriguez v. AT&T*
 13 *Mobility Servs. LLC*, 728 F.3d 975, 979 (9th Cir. 2013) (focusing on whether intervening
 14 authority “so undercuts the principles on which [a Ninth Circuit case] relied that our prior
 15 decision cannot stand”).

16 Applying these principles here, it is clear that *Bruen* is not clearly irreconcilable
 17 with the Ninth Circuit Section 922(g)(1) cases determined on the basis of the first step of
 18 the since-overturned circuit court test. After *Heller*, circuit courts, including the Ninth
 19 Circuit, employed a two-step test that first looked to history and the Second Amendment’s
 20 text “to determine whether the challenged law burdened conduct protected by the Second
 21 Amendment,” and, if so, “then applied the appropriate level of scrutiny.” *Baird v. Bonta*,
 22 81 F.4th 1036, 1043 (9th Cir. 2023) (cleaned up); *see also Bruen*, 597 U.S. at 18-19. The
 23 *Bruen* majority noted that its ‘new’ test was the same as the one set forth in *Heller*—and
 24 that this approach was “broadly consistent” with step one of the circuit courts’ former test.
 25 *Bruen*, 597 U.S. at 19, 26; *see also Lair*, 697 F.3d at 1207 (precedent was not abrogated
 26 where the intervening authority clarified and reinforced the principles upon which the prior
 27 opinions relied). Thus, to the extent that the Ninth Circuit Section 922(g)(1) cases rely
 28 upon the first step of the defunct test, they do not obviously contradict, and may even be

1 consistent with, *Heller* and *Bruen*.

2 The Ninth Circuit's previous opinions have addressed both the text of the Second
 3 Amendment and the historical tradition of firearms regulation in assessing the
 4 constitutionality of felon-in-possession prohibitions. In *United States v. Vongxay*, the Ninth
 5 Circuit found that "felons are categorically different from the individuals who have a
 6 fundamental right to bear arms," suggesting that the text of the Second Amendment does
 7 not extend to anyone with a felony conviction. 594 F.3d at 1115; *accord id.* at 1115 n.1
 8 (noting that Justice Stevens' dissent underscored that the *Heller* majority limited the
 9 Second Amendment's protected class to "law abiding, responsible citizens").

10 Ninth Circuit precedent on the history and tradition of felon-in-possession bans
 11 also lends toward upholding Section 922(g)(1). The Ninth Circuit has recognized that the
 12 historical longevity of felon firearm bans "has not been definitively resolved." *Vongxay*,
 13 594 F.3d at 1118; *accord Phillips*, 827 F.3d at 1174 n.2. But in *Vongxay*, the Ninth Circuit
 14 examined the historical record and found that felons "historically have been explicitly
 15 prohibited from militia duty" and

16 most scholars of the Second Amendment agree that the right to bear arms was
 17 inextricably tied to the concept of a virtuous citizenry that would protect society
 18 through defensive use of arms against criminals, oppressive officials, and
 foreign enemies alike, and that the right to bear arms does not preclude laws
 disarming the unvirtuous citizens (i.e., criminal).

19 *Vongxay*, 594 F.3d at 1117-18 (cleaned up). Even *Heller* noted that prohibitions on the
 20 possession of firearms by felons were "longstanding" and thus "presumptively lawful." 554
 21 U.S. at 626-27 & n.26. The Court is "not empowered to disregard this binding precedent."
 22 *United States v. Butts*, 637 F. Supp. 3d 1134, 1138 (D. Mont. 2022). Though Alvarez-
 23 Mora has identified "some tension" between *Bruen* and the Ninth Circuit Section 922(g)(1)
 24 cases, *Lair*, 697 F.3d at 1207, that tension is not so great that prior Ninth Circuit decisions
 25 "cannot stand," *Rodriguez*, 728 F.3d at 979; *accord Butts*, 637 F. Supp. 3d at 1138; *United*
 26 *States v. Gamble*, ___ F. Supp. 3d. ___, No. 2:22-CR-00267-JAD-EJY, 2023 WL 6460665,
 27 at *3 (D. Nev. Oct. 4, 2023); *United States v. Roberts*, ___ F. Supp. 3d. ___, No. 3:23-CR-
 28 00057-TMB-KFR-1, 2024 WL 50889, at *6 (D. Alaska Jan. 4, 2024); *cf. Teter v. Lopez*,

1 76 F.4th 938, 947, 950 (9th Cir. 2023), *reh'g en banc granted, opinion vacated*, 93 F.4th
 2 1150 (9th Cir. 2024) (opinions upholding arms regulations at the heightened scrutiny step
 3 were abrogated by *Bruen*).

4 **B. *Bruen* Test**

5 “Even if *Vongxay*’s analysis is too thin to render it controlling law post *Bruen*, its
 6 conclusion that [Section] 922(g)(1) passes constitutional muster remains sound under the
 7 new test.” *Gamble*, 2023 WL 6460665, at *3; *see also Lair*, 697 F.3d at 1207 (instructing
 8 courts to consider an intervening authority’s reasoning and analysis, even if prior
 9 precedent has not been abrogated). Proceeding under this assumption, the Court will
 10 assess Section 922(g)(1) under each step of the *Bruen* test in turn.

11 **1. Plain Text of the Second Amendment**

12 The Second Amendment enshrines “the right of the people to keep and bear
 13 Arms,” U.S. CONST. amend. II; however, that right “is not unlimited,” *Heller*, 554 U.S. at
 14 626. The government argues that felons are not afforded Second Amendment protections
 15 because their prior convictions inherently disqualify them from being “law-abiding
 16 citizens.” (ECF No. 30 at 8-11.) Alvarez-Mora counters that individuals with felony
 17 convictions are part of ‘the people’ to whom the Second Amendment extends and thus
 18 are covered under its plain text. (ECF No. 28 at 8-11.)

19 The Supreme Court has not yet explicitly delimited the scope of ‘the people’ whom
 20 the Second Amendment protects. *See United States v. Sitladeen*, 64 F.4th 978, 984 (8th
 21 Cir. 2023). The Court’s decision in *Heller* indicated that ‘the people’ may have the same
 22 meaning under the First, Second, and Fourth Amendments, and therefore the right to
 23 bear arms presumptively extends to “all members of the political community, not an
 24 unspecified subset.” 554 U.S. 570, 580-81 (2008) (citing *United States v. Verdugo-Urquidez*,
 25 494 U.S. 259, 265 (1990)). A plurality of the Court seemed to reaffirm that the
 26 Second Amendment must be interpreted in line with other individual constitutional rights
 27 two years later when it rejected the idea that the right to keep and bear arms is “a second-
 28 class right, subject to an entirely different body of rules than the other Bill of Rights

1 guarantees.” *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion);
 2 *accord Bruen*, 597 U.S. at 70. At the same time, the Court has also implied that the
 3 Second Amendment right is not universal, as longstanding prohibitions on firearms
 4 possession by “felons and the mentally ill” are presumptively valid. *Heller*, 554 U.S. at
 5 626 & n.26; *accord McDonald*, 561 U.S. at 786 (plurality). Given these “conflicting
 6 pronouncements,” *Heller*, 554 U.S. at 644 (Stevens, J. dissenting), it is unclear whether
 7 the repeated references to “law-abiding citizens” in the Supreme Court’s Second
 8 Amendment jurisprudence² are meant to refer to only the core Second Amendment right
 9 or define the right’s entire scope, *see Antonyuk v. Chiumento*, 89 F.4th 271, 312-13 (2d
 10 Cir. 2023); *see also Atkinson v. Garland*, 70 F.4th 1018, 1023 (7th Cir. 2023) (finding that
 11 *Bruen* left “unresolved” the “complicated issue” of whether the plain text of the Second
 12 Amendment covers felons).

13 Post-*Heller*, the Ninth Circuit has suggested that Second Amendment rights may
 14 not extend to persons convicted of felonies. *See Vongxay*, 594 F.3d at 1115 (“[F]elons
 15 are categorically different from the individuals who have a fundamental right to bear
 16 arms.”); *id.* at 1115 n.1 (noting that Justice Stevens’ dissent underscored that the *Heller*
 17 majority limited the Second Amendment’s protected class to “law abiding, responsible
 18 citizens”).³ Though the Ninth Circuit has not weighed in on this issue again after *Bruen*,
 19 other judges in this district have found that *Bruen* “reinforces *Heller*’s conclusion that
 20 individuals with felony convictions fall outside the scope of the Second Amendment’s
 21 protections.” *Gamble*, 2023 WL 6460665, at *4; *see also Teter*, 76 F.4th at 949 n.9
 22 (declining to address whether criminals are included in ‘the people’).

23 However, given the large and complicated constitutional questions in this field and
 24 the ambiguity of controlling precedent, the Court will assume, without deciding, that

25
 26 ²See, e.g., *Heller*, 554 U.S. at 625, 635; *McDonald*, 561 U.S. at 790; *Bruen*, 597
 U.S. at 9, 26, 29-31, 38, 60, 70-71.

27
 28 ³The Court’s analysis under the *Bruen* test presumes that *Vongxay* has been
 abrogated. Even if the ultimate holding of *Vongxay* were abrogated, *Bruen* did not reject
 the accuracy of *Vongxay*’s analysis of the Second Amendment’s text. The Court thus
 finds it instructive, at minimum.

1 persons with felony convictions fall within the scope of the Second Amendment Right as
 2 articulated under *Heller*, *Verdugo-Urquidez*, and *Bruen*. See *United States v. Torres*, 911
 3 F.3d 1253, 1261 (9th Cir. 2019) (declining to determine whether the Second Amendment
 4 extends to unlawfully present immigrants because the state of the law precluded a definite
 5 answer).

6 **2. ‘Historical Tradition’ Test**

7 Regardless, Section 922(g)(1) is “consistent with this Nation’s historical tradition
 8 of firearm regulation.” *Bruen*, 597 U.S. at 17. For the Court to uphold Section 922(g)(1),
 9 the government must demonstrate that the provision has a “well-established and
 10 representative historical analogue,” though they need not identify a “historical twin.” *Id.* at
 11 30. Two central inquiries in determining whether Section 922(g)(1) and historical gun
 12 ownership restrictions are “relevantly similar” are whether Section 922(g)(1) and historical
 13 restrictions “impose a comparable burden on the right of armed self-defense” and
 14 “whether that burden is comparably justified.” *Id.* at 29. This analysis must also be
 15 undertaken in light of the Supreme Court’s repeated instructions that the “longstanding”
 16 restrictions on felons possessing firearms are “presumptively” valid. *Heller*, 554 U.S. at
 17 626-27 & n.26; *accord McDonald*, 561 U.S. at 786 (reiterating this point); *see also*
 18 *Presumption*, Black’s Law Dict. (10th ed. 2014) (“A presumption shifts the burden of
 19 production or persuasion to the opposing party.”); *Godoy v. Spearman*, 861 F.3d 956,
 20 965 (9th Cir. 2017) (“[A] presumption can be rebutted only by contrary evidence.”). Below
 21 is a rendition of the most relevant history. See *Bruen*, 597 U.S. at 34-38 (noting that
 22 historical evidence near in time to the amendment’s adoption in 1791 is the most
 23 illuminating as to the scope of the right).

24 During the Founding era, it was well understood that the government could disarm
 25 those who did not comply with certain communal obligations and abide by the norms of
 26 civic society. See *Vongxay*, 594 at 1118 (noting that the majority of historians agree that
 27
 28

1 right to bear arms was tied to virtuous citizenry);⁴ *United States v. Jackson*, 69 F.4th 495,
 2 504 (8th Cir. 2023). Notably, Connecticut enacted a law in late 1775 mandating that any
 3 person convicted of libeling or defaming the acts of the Continental Congress or
 4 Connecticut General Assembly “shall be disarmed and not allowed to have or keep any
 5 arms.”⁵ (ECF No. 30 at 15.) Relative to Section 922(g)(1), this Connecticut law imposed
 6 comparable burdens on firearms possession, with comparable justifications. See *Bruen*,
 7 597 U.S. at 29. Both Section 922(g)(1) and the Connecticut law completely restrict access
 8 to guns after a conviction for a specific class of crimes, and both were enacted due to the
 9 legislatures’ views that committing the identified crimes indicated the person might pose
 10 a danger to society if armed. Though not historical twins, the two are distinctly and
 11 relevantly similar. The subsequent enactment of more analogous restrictions on felons’
 12 gun rights is not dispositive, as “it is not necessary that [Section] 922(g)(1) have a
 13 historical twin, just that there is an analogous precursor.” *Gamble*, 2023 WL 6460665, at
 14 *4 (footnote omitted).

15 Alvarez-Mora argues that the Connecticut law is materially different from Section
 16 922(g)(1)’s lifetime ban because it allowed an “inimical” individual to restore his rights
 17 once “he could prove his friendliness to the liberal cause.” Joseph G.S. Greenlee, *The*
 18 *Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20
 19 Wyo. L. Rev. 249, 269 (2020) (quoting G.A. Gilbert, *The Connecticut Loyalists*, 4 AM. HIST.
 20 REV. 273, 282 (1899)). But this argument is misplaced. The Connecticut law divided
 21 Loyalists into three categories, each with its own restrictions on firearms possession: (1)
 22 persons who aided the British; (2) persons convicted of defaming the resolves of
 23 Congress or acts of Connecticut; and (3) persons reported to local authorities as ‘inimical.’

24
 25 ⁴ The Court’s analysis under the *Bruen* test presumes that *Vongxay* has been
 26 abrogated. Even if the ultimate holding of *Vongxay* were abrogated, *Bruen* did not reject
 the accuracy of *Vongxay*’s historical analysis. The Court thus finds it instructive, at
 minimum.

27 ⁵An Act for Restraining and Punishing Persons Who Are Inimical to the Liberties
 28 of This and the Rest of the United Colonies, and for Directing Proceedings Therein (Dec.
 1775), *in* 15 THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT [1636-1776] 193 (C.J.
 Hoadly ed., 1850), perma.cc/2F8V-S9JF.

1 See G.A. Gilbert, *The Connecticut Loyalists*, 4 AM. HIST. REV. 273, 282 (1899). While a
 2 person of the third class “would be disarmed until such time as he could prove his
 3 friendliness to the liberal cause,” anyone of the second class—the provision of the law
 4 upon which the Court relies—“could keep no arms” and was not afforded a means to
 5 restore that right. *Id.*; accord An Act for Restraining and Punishing Persons Who Are
 6 Inimical to the Liberties of This and the Rest of the United Colonies, and for Directing
 7 Proceedings Therein (Dec. 1775), *in* 15 THE PUBLIC RECORDS OF THE COLONY OF
 8 CONNECTICUT [1636-1776] 193 (C.J. Hoadly ed., 1850). Thus, the conclusion that both
 9 laws similarly burdened the right to bear arms by imposing a lifetime ban on firearms
 10 possession still stands.

11 Moreover, this Connecticut law was not an outlier. Cf. *Bruen*, 597 U.S. at 65-66,
 12 70. The majority in *Bruen* rejected the Texas Supreme Court’s interpretation of the
 13 Second Amendment after the Civil War as a “late-in-time” outlier because it “contradict[ed]
 14 the overwhelming weight of other evidence” regarding the understanding of the scope of
 15 the right. *Id.* at 66, 70. The Connecticut law, in contrast, is from the most historically
 16 relevant time period and does not evince a fundamentally different conception of the right
 17 to bear arms than its contemporaries.

18 Disarming those who violated statutes requiring an affirmation of loyalty to the
 19 American colonies was commonplace. A few months after the Connecticut law’s
 20 enactment, the Continental Congress passed a resolution recommending that the
 21 colonies disarm all persons “who are notoriously disaffected to the cause of America” or
 22 who refused to associate with the American military in the Revolutionary War.⁶ (ECF No.
 23 30 at 15.) Several individual states subsequently passed laws requiring their citizens to
 24 swear oaths of loyalty to the state and disarmed those who did not comply.⁷ (*Id.* at 15-
 25

26 ⁶Resolution of March 14, 1776, *in* 4 JOURNALS OF THE CONTINENTAL CONGRESS,
 1774-1789 205 (Worthington Chauncey Ford ed., 1904), perma.cc/6XMF-DDY9.

27 ⁷See e.g., 5 ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF THE
 28 MASSACHUSETTS BAY 479 (1886), perma.cc/94L8-VKLT (disarming any man in
 Massachusetts who did not sign a loyalty oath); Act of June 13, 1777, § 1 (1777), *in* 9 THE

1 16.) In North Carolina, for example, anyone who did not give the mandated affirmation of
 2 loyalty lost their right to “keep Guns or other Arms within his or their house.”⁸ (*Id.* at 15-
 3 16.) Taken together, these acts evince a historical understanding among American
 4 colonists that the right to bear arms—whether derived from the common law or state
 5 constitutions⁹—did not preclude the government from disarming persons who violated the
 6 law. That disarmament was focused on a single class of legal violations does not
 7 substantially undermine the loyalty-oath statutes’ analogical fit to Section 922(g)(1), as it
 8 likewise focuses on a single, albeit larger, class of violations.

9 This idea that it was acceptable for the government to disarm those who more
 10 broadly did not comply with the rules of society is also bolstered by the ratification
 11 debates. Two state conventions suggested that the Constitution should include a limited
 12 right to bear arms. (ECF No. 30 at 19.) The Pennsylvania minority dissent to the
 13 ratification of the Constitution recognized that citizens had a right to bear arms “unless for
 14

15 STATUTES AT LARGE OF PENNSYLVANIA FROM 1652-1801 110, 112-13 (William Stanley Ray
 16 ed., 1903), perma.cc/K4SH-4M7S (disarming all white men living in Pennsylvania who
 17 did not swear allegiance to the state); An Act for Constituting a Council of Safety, *in ACTS*
 18 *OF THE GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY AT A SESSION BEGUN ON THE 27TH*
 19 *DAY OF AUGUST, 1776*, at 90 (1777), perma.cc/GM48-QN3M (disarming persons deemed
 20 “disaffected and dangerous to the present Government”); 7 RECORDS OF THE COLONY OF
 21 RHODE ISLAND AND PROVIDENCE PLANTATIONS, IN NEW ENGLAND 567 (John Russell Bartlett
 22 ed., 1856), perma.cc/B933-GHGU (confiscating the “arms, ammunition, and warlike
 23 stores” of any person in Rhode Island who refused to pledge loyalty to the American
 24 colonies); An Act to Oblige the Free Male Inhabitants of this State Above a Certain Age
 25 to Give Assurance of Allegiances to the Same, and for Other Purposes (1777), LIBR. OF
 26 CONG., perma.cc/F9FN-NAAP (disarming “all free born male inhabitants” of Virginia who
 27 refused to swear their “allegiance and fidelity’ to the state”).

28 ⁸An Act to Amend an Act for Declaring What Crimes and Practices Against the
 29 State shall be Treason, and What Shall Be Misprison of Treason, and Providing
 30 Punishments Adequate to Crimes of Both Classes, and for Preventing the Dangers which
 31 May Arise from Persons Disaffected to the State, *in 24 ACTS OF THE NORTH CAROLINA*
 32 *GENERAL ASSEMBLY, 1777*, at 89 (1777), perma.cc/S7KP-8X8C.

33 ⁹The oath-based disarmament statutes from Massachusetts, North Carolina, and
 34 Pennsylvania are particularly instructive, as each state’s constitution contained an
 35 individual right to bear arms before their passage. (ECF No. 30 at 16 n.4 (citing individual
 36 provisions of each state’s constitution)). See *also Heller*, 554 U.S. at 601. Other states’
 37 laws are still relevant, as they support the idea that the American colonists understood
 38 the pre-existing common law right to bear arms could be burdened in this manner. See
 39 *Bruen*, 597 U.S. at 26, 34, 39 (noting that the Second Amendment codified the pre-existing
 40 English common law right to bear arms).

1 crimes committed, or real danger of public injury.”¹⁰ (ECF No. 30 at 16, 19.) Though it
 2 was not an adopted law, *Heller* recognized that this report was a “highly influential”
 3 “precursor” to the Second Amendment. 554 U.S. at 604. The New Hampshire delegation’s
 4 proposal—upon which *Heller* also relied, *see* 554 U.S. at 604—recommended amending
 5 the Constitution to provide that “Congress shall never disarm any Citizen unless such as
 6 are or have been in Actual Rebellion,”¹¹ (ECF No. 30 at 16-17). In the Massachusetts
 7 convention, Samuel Adams proposed recommending an amendment to the Constitution
 8 that would prohibit Congress from preventing “peaceable citizens” from keeping arms.¹²
 9 (*Id.* at 19.)

10 Though these proposals were not codified, they are still illuminating as to the scope
 11 of the right to bear arms. “[E]xamination of a variety of legal and other sources to
 12 determine the public understanding of a legal text in the period after its enactment or
 13 ratification’ [is] ‘a critical tool of constitutional interpretation.’” *Bruen*, 597 U.S. at 20
 14 (quoting *Heller*, 554 U.S. at 605) (emphasis removed). *Heller* itself extensively reviewed
 15 non-legal historical sources—including Founding era legal writings and post-Civil War
 16 public discourse, Congressional debates, and legal writings, *see id.* at 21 (discussing
 17 *Heller*, 554 U.S. at 605, 614, 616-19)—to confirm what the Court had already found
 18 established by historical law, *id.* at 37. So too this Court looks to the ratification debates
 19 as evidence of the historical understanding of the pre-existing common law right to bear
 20 arms which was codified in the Second Amendment. See *id.* at 26, 34, 39.

21 “Historical analysis can be difficult; it sometimes requires resolving threshold
 22 questions, and making nuanced judgments about which evidence to consult and how to

23
 24 ¹⁰Address and Reasons of Dissent of the Minority of the Convention of the State
 25 of Pennsylvania to their Constituents, 1787, *in* BERNARD SCHWARTZ, 2 THE BILL OF RIGHTS:
 26 A DOCUMENTARY HISTORY 662, 665 (1971).

27
 28 ¹¹1 DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL
 29 CONSTITUTION 326 (Jonathan Elliott ed., 1836), perma.cc/9BPC-ABLA.

30
 31 ¹²DEBATES & PROCEEDINGS IN THE CONVENTION OF THE COMMONWEALTH OF
 32 MASSACHUSETTS, HELD IN THE YEAR 1788, AND WHICH FINALLY RATIFIED THE CONSTITUTION
 33 OF THE UNITED STATES 86 (1856), perma.cc/P9EM-4P2L; *see also* Massachusetts
 34 Ratifying Convention: Commentary, *in* SCHWARTZ, *supra* note 10, at 674-75, 707.

1 interpret it." *McDonald*, 561 U.S. at 803-804 (Scalia, J., concurring). But the weight of the
2 evidence before the Court supports a finding that Section 922(g)(1) is "consistent with the
3 Second Amendment's text and historical understanding." *Bruen*, 597 U.S. at 26.
4 Especially given the Supreme Court's instruction to view laws like Section 922(g)(1) with
5 a presumption of validity, the government has met its burden of showing that the United
6 States has a tradition of disarming persons who demonstrate an unwillingness to comply
7 with societal rules and norms by violating the law. See *Heller*, 554 U.S. at 626-27 & n.26;
8 *McDonald*, 561 U.S. at 786.

9 **IV. CONCLUSION**

10 The Court notes that the parties made several arguments and cited several cases
11 not discussed above. The Court has reviewed these arguments and cases and
12 determines that they do not warrant discussion, as they do not affect the outcome of the
13 motion before the Court.

14 It is therefore ordered that Defendant Colby Vega Alvarez-Mora's motion to
15 dismiss (ECF No. 28) is denied.

16 DATED THIS 15th Day of April 2024.

17
18
19 
20 MIRANDA M. DU
21 CHIEF UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28